

Remarks / Arguments

Claims 1-4, 7-10, and 13-23 are currently pending in this application. With this Amendment, claims 1, 7, and 13-23 have been amended. Support for the amendments is found, for example, in paragraph [021] of the specification. No new matter has been added by virtue of these amendments.

1. Statement of the Substance of the Interview

The attorneys of record wish to thank Examiner Matter for the telephonic interview conducted on October 14, 2008, between Examiner Matter, Aleya Champlin, and Audrey Babcock.

A possible amendment to claim 1 was discussed. This possible amendment would involve adding language reciting that the central depressed area of the lid conformed approximately to a size and shape of a user's facial structure around the user's nose. The attorneys of record stated that Frank et al. required the hood of the Frank et al. device to be in sealing engagement with the user's face, so that if the hood of Frank et al. conformed to the facial structure around the user's nose, it would render the Frank et al. device inoperable.

The combination of the Shayan and Frank et al. references was also discussed. The attorneys of record stated that this combination of references would render Shayan inoperable, because Shayan was directed to a very controlled system for delivering a substance in vapor form to a user. The Examiner stated that Shayan could also be used for aromatherapy.

A possible amendment to the claims, reciting that vapors were concentrated around a user's nasal area, was also discussed. The Examiner indicated that claims including language directed to the concentration of vapors at the user's nose, the relative size of the lid opening in relation to the reservoir opening, and the shape of the lid might overcome the prior art of record. The Examiner and the attorneys of record discussed the entry of the proposed amendments, and it was agreed that an RCE would be filed with a new Amendment amending the claims.

2. Claim Rejections - 35 U.S.C. § 103

a. Shayan in view of Frank et al.

Claims 1-3, 13-18, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shayan in view of Frank et al.

Claim 1, as amended, is directed to a portable vapor inhaler comprising a reservoir and a lid, "wherein the lid further comprises at least one lid opening, wherein each lid opening is smaller in area than the opening of the reservoir." The combination of Shayan and Frank et al. does not teach or suggest a lid of a portable vapor inhaler wherein each lid opening is smaller in area than the opening of the portable vapor inhaler's reservoir.

Shayan, which is directed to an apparatus for the vaporization of materials, does not disclose, teach, or suggest a lid comprising a lid opening that is smaller in area than the opening of a reservoir. In the Shayan device, the vapor that passes through the lid opening is created in a source material holder 22. The vapor flows from the source material holder 22 into a venturi tube receptacle 40. (See Col. 7, lines 28-33.) If the source material holder 22 is considered to be a reservoir, then the opening of the reservoir is the opening between the source material holder 22 and the venturi tube receptacle 40. If the venturi tube receptacle 40 is considered to be a reservoir, then the opening of the reservoir is the opening between the venturi tube receptacle and the top 12. (See Figs. 2 and 3.) The top 12 of the Shayan device has an opening 11. (Col. 6, lines 50-51.) Shayan does not disclose, teach, or suggest that the opening 11 in the top 12 is smaller in area than either the opening between the source material holder 22 and the venturi tube receptacle 40, or the opening between the venturi tube receptacle 40 and the top 12. Therefore, Shayan does not disclose, teach, or suggest the use of a lid comprising a lid opening that is smaller in area than the opening of the reservoir.

Frank et al., which is directed to a vaporizing device, also fails to disclose, teach, or suggest a lid comprising a lid opening that is smaller in area than an opening of a reservoir. In the Frank et al. device, the steam inhaled by a user is created in the steam generating and control section 12. (Col. 5, lines 8-12.) Steam passes from the steam generating and control section 12 to the hood section 14 through openings 102. (See Figure 3.) If the steam generating and control section 12 is considered to be a reservoir, then each of the openings 102 is an opening of the

reservoir. The Examiner has referred to the hood section 14 as a lid. (*See* Office Action, page 2, paragraph 4.) Frank et al. does not disclose, teach, or suggest that an opening of hood section 14 is smaller in area than an opening 102 of the reservoir 12.

Moreover, claim 1, as amended, recites that “*each* lid opening is smaller in area than the opening of the reservoir.” (Emphasis added.) One of the openings of hood section 14 of Frank et al. is the opening defined by the upper margin 140. (Fig. 2; *see also* col. 7, lines 50-58.) The opening defined by the upper margin 140 is larger than an opening 102 of the reservoir 12. (*See* Figs. 1 and 3.)

In addition, Frank et al. teaches against any modification that would make the opening defined by the upper margin 140 of the hood section smaller than an opening 102 of the reservoir 12. Frank et al. discloses that during use of the Frank et al. device, the user’s face is “in sealing engagement with the upper margin of the hood section.” (Col. 3, lines 24-25.) A recessed region of the upper margin is “for receiving and/or supporting a portion of the user’s jaw/neck,” while a second recessed region is “for closely sealing against the bridge of the user’s nose.” (Col. 7, lines 50-56.) Segments of the upper margin “extend below the eyes for sealing against the user’s cheekbones.” (Col. 7, lines 56-58.) The reason for an arrangement in which the user’s face is in sealing engagement with the upper margin of the hood section is that “[a]s a result of this arrangement the steam directed through the hood section 114 impinges upon the user’s nose and mouth, without unduly irritating his or her eyes.” (Col. 7, lines 59-62.)

The upper margin of the Frank et al. device is therefore designed so that a user can rest his or her face against it in such a way that the user’s nose and mouth are located above the openings 102, with the edge of the upper margin sealing against the bridge of the user’s nose and the user’s cheekbones, so that the user’s eyes are kept out of the path of the steam emanating from the device. If the opening defined by the upper margin 140 were smaller in area than an opening 102 of the reservoir 12, a user would not be able to rest his or her face against the upper margin in the same manner, thereby potentially exposing his or her eyes to the steam from the Frank et al. device. Therefore, Frank et al. teaches away from a device in which the opening defined by the upper margin is smaller in area than an opening of the reservoir. Consequently,

Frank et al. teaches away from a device in which “each lid opening is smaller in area than the opening of the reservoir,” as recited in claim 1.

Moreover, claim 1, as amended, recites that the lid “comprises a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user’s facial structure around the user’s nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user’s nasal area.” Neither Shayan nor Frank et al., either alone or in combination, discloses, teaches, or suggests the lid recited in claim 1.

As shown in the views of the top 12 of the Shayan device depicted in Figs. 1, 2, and 4, Shayan does not disclose, teach, or suggest a lid comprising a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user’s facial structure around a user’s nose. The Examiner states that it would have been obvious to one of ordinary skill in the art “to have provided Shayan’s device with a removable hood as taught by Frank for allowing the user to better direct the vapor into the nose for inhalation.” (Office Action, page 3, paragraph 1.) However, the hood of Frank et al. does not include a central depressed area and a wall comprising a shaped depression “wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user’s facial structure around the user’s nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user’s nasal area.” The hood of Frank et al. is adapted to receive and/or support “a portion of a user’s jaw/neck” and to “closely [seal] against the bridge of the user’s nose,” while segments of the upper margin of the hood “extend below the eyes for sealing against the user’s cheekbones.” (Col. 7, lines 52-58.) Therefore, the hood is not adapted “to concentrate a vapor from the reservoir at the user’s nasal area.” Instead, as shown in Fig. 1, the hood is adapted such that vapor impinges on the user’s neck, jaw, chin, cheeks, mouth, and nose, without being concentrated at the user’s nasal area.

In sum, Shayan and Frank et al., either alone or in combination, do not disclose, teach, or suggest a portable vapor inhaler comprising a lid, “wherein the lid comprises a central depressed area and a wall around the central depressed area, said wall comprising a shaped

depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, and wherein the lid further comprises at least one lid opening, wherein each lid opening is smaller in area than the opening of the reservoir, and wherein the lid is adapted to concentrate a vapor from the reservoir at the user's nasal area." In fact, Frank et al. even teaches against modifying a device to create the lid recited in claim 1, because Frank et al. teaches against a lid wherein each lid opening is smaller in area than the opening of a reservoir.

As stated in the MPEP, for an invention to be obvious, "[t]he gap between the prior art and the claimed invention may not be 'so great as to render the [claim] nonobvious to one reasonably skilled in the art.'" MPEP § 2141 (citing *Dann v. Johnston*, 425 U.S. 219, 230 (1976)). The differences between the invention of claim 1 and the combination of Shayan and Frank et al., as discussed above, are so great as to render claim 1 nonobvious to one of ordinary skill in the art. Therefore, claim 1 is not obvious over Shayan in view of Frank et al.

Claims 2, 3, and 18 are dependent on claim 1. Consequently, claims 2, 3 and 18 are also not obvious over Shayan in view of Frank et al.

Claim 13, as amended, is not obvious over Shayan in view of Frank et al. for the same reasons that claim 1 is not obvious. Claim 20 is dependent on claim 13, and therefore is also not obvious over Shayan in view of Frank et al.

With regard to claims 14-17, the Examiner states that the "modified device disclosed by Shayan and Frank has all of the structural limitations needed to perform the recited method steps and is fully capable of doing so. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified device, to perform the recited method steps of the instant claim." (Office Action, carry-over paragraph from page 3 to page 4.)

The Applicant respectfully asserts that a device made from the combination of Shayan and Frank et al. would not have all of the features needed to perform the recited method steps of claims 14-17, as amended. Claims 14-17, as amended, each include the step of "connecting a lid comprising at least one lid opening, wherein each lid opening is smaller in area than the opening of the reservoir, and further comprising a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and

the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, to the reservoir whereby an amount of humidified air forms in the reservoir and is concentrated by the lid at the user's nasal area."

As discussed above with regard to claim 1, neither Shayan nor Frank et al., either alone or in combination, discloses, teaches, or suggests a lid comprising "at least one lid opening, wherein each lid opening is smaller in area than the opening of the reservoir." Also as discussed with regard to claim 1, neither Shayan nor Frank et al., either alone or in combination, discloses, teaches, or suggests a lid comprising "a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user's nasal area." Consequently, a device made from the combination of Shayan and Frank et al. would not include all of the features necessary to perform the recited method steps of claims 14-17, and it would not have been obvious to one of ordinary skill in the art, upon seeing a device made from the combination of Shayan and Frank et al., to perform the recited method steps.

For the foregoing reasons, claims 1-3, 13-18, and 20 are not obvious over Shayan in view of Frank et al. Reconsideration of the rejection of these claims is respectfully requested.

b. Nielsen in view of Fuisz et al.

Claims 1-3, 7, 8, and 13-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nielsen in view of Fuisz et al.

Claim 1, as amended, is directed to a portable vapor inhaler comprising a lid "wherein the lid comprises a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user's nasal area." Neither Nielsen nor Frank et al., either alone or in combination, discloses, teaches, or suggests the lid recited in claim 1.

Nielsen is directed to a drinking vessel that “provides a method of cooling a drink with dry ice.” (Col. 1, lines 34-41.) The Examiner has referred to the upper portion 12 of the Nielsen vessel as a lid, and has referred to the area inside of the Nielsen vessel as a central depressed area. (Office Action, page 4, paragraph 3.) If the area inside of the Nielsen vessel is considered to be the central depressed area of a lid, the wall around the central depressed area would be the sides of the upper portion 12. The sides of the upper portion 12 do not include a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user’s facial structure around the user’s nose. Consequently, Nielsen does not disclose, teach, or suggest the lid recited in claim 1.

Moreover, the upper portion 12 is not adapted to concentrate a vapor from the reservoir at the user’s nasal area. The Examiner states that the bottom 18 of the upper portion 12 of the Nielsen vessel would concentrate vapor. (Office Action, page 8, paragraph 3.) However, the bottom 18 of the Nielsen vessel would be separated from a user’s nasal area by the sides of the upper portion 12, and by any liquid in the upper portion of the vessel. Consequently, Nielsen does not disclose, teach, or suggest a lid “adapted to concentrate a vapor from the reservoir at the user’s nasal area,” as recited in claim 1.

Fuisz et al., which is directed to a single dose inhalation therapy device, is cited by the Examiner as “disclosing effervescent compositions immersed in water, for example, to allow a user to inhale an active substance.” (Office Action, page 4, paragraph 3.) The Fuisz et al. inhalation therapy device “has a breakably sealed container 12 at least partially filled with an active substance 14. . . . In a preferred embodiment . . . the device 10 is configured like a spheroid within the range of about one-quarter to three inches in diameter.” (Fuisz et al., col. 2, lines 28-47.) Fuisz et al. does not disclose, teach, or suggest a lid comprising “a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user’s facial structure around the user’s nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user’s nasal area,” as recited in claim 1. Therefore, Fuisz et al. does not compensate for the deficiencies of Nielsen discussed above.

As stated in the MPEP, for an invention to be obvious, “[t]he gap between the prior art and the claimed invention may not be ‘so great as to render the [claim] nonobvious to one reasonably skilled in the art.’” MPEP § 2141 (citing *Dann v. Johnston*, 425 U.S. 219, 230 (1976)). The differences between the invention of claim 1 and the combination of Nielsen and Fuisz et al., as discussed above, are so great as to render claim 1 nonobvious to one of ordinary skill in the art. Therefore, claim 1 is not obvious over Nielsen in view of Fuisz et al.

Claims 2, 3, 7, 8, 18, 19, and 22 are dependent on claim 1. Consequently, claims 2, 3, 7, 8, 18, 19, and 22 are also not obvious over Nielsen in view of Fuisz et al.

Moreover, claim 7 is not obvious over Nielsen in view of Fuisz et al. because the combination of references does not disclose, teach, suggest, or render obvious a portable vapor inhaler “wherein at least one lid opening is a closeable opening whereby the effervescent composition and water can be added to the reservoir,” as recited in claim 7. The Examiner states that opening 614 of Nielsen, shown in Fig. 6, is a closeable opening. However, there is no indication that opening 614 is closeable. The plug 622 is not a plug to be used to close opening 614. Instead, it is a plug for bottom portion 620 of the vessel. (Nielsen, col. 3, lines 6-8.) When plug 622 is inserted into the vessel, it becomes the base of the vessel. (See Fig. 6.) Water could not be added to a reservoir through the opening in the bottom portion 620 that is closed by plug 622, because without plug 622, the vessel, lacking a base, would not be able to hold water. Therefore, claim 7 is not obvious over Nielsen in view of Fuisz et al.

Claim 13, as amended, is not obvious over Nielsen in view of Fuisz et al. for the same reasons that claim 1 is not obvious. Claims 20, 21, and 23 are dependent on claim 13, and therefore are also not obvious over Nielsen in view of Fuisz et al.

With regard to claims 14-17, the Examiner states that the “modified device disclosed by Nielsen and Fuisz et al. has all of the structural limitations needed to perform the recited method steps and is fully capable of doing so. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified device, to perform the recited method steps of the instant claim” (Office Action, page 5, paragraph 6).

The Applicant respectfully asserts that a device made from the combination of Nielsen and Fuisz et al. would not have all of the features needed to perform the recited method steps of

claims 14-17, as amended. Claims 14-17, as amended, each include the step of "connecting a lid . . . further comprising a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, to the reservoir whereby an amount of humidified air forms in the reservoir and is concentrated by the lid at the user's nasal area."

As discussed above with regard to claim 1, neither Nielsen nor Fuisz et al., either alone or in combination, discloses, teaches, or suggests a lid comprising "a central depressed area and a wall around the central depressed area, said wall comprising a shaped depression, wherein the central depressed area and the shaped depression together conform approximately to a size and shape of a user's facial structure around the user's nose, and . . . wherein the lid is adapted to concentrate a vapor from the reservoir at the user's nasal area." Consequently, a device made from the combination of Nielsen and Fuisz et al. would not include all of the features necessary to perform the recited method steps of claims 14-17, and it would not have been obvious to one of ordinary skill in the art, upon seeing a device made from the combination of Nielsen and Fuisz et al., to perform the recited method steps.

For the foregoing reasons, claims 1-3, 7, 8, and 13-23 are not obvious in light of Nielsen and Fuisz et al. Reconsideration of the rejection of these claims is respectfully requested.

c. Nielsen in view of Fuisz et al. and further in view of Silten

Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nielsen in view of Fuisz et al. and further in view of Silten.

Silten is directed to an apparatus for generating vapors. The Examiner cites Nielsen as disclosing "a device for the inhalation of vapors comprising substances with excipients . . . and dyes." (Office Action, page 6, paragraph 2.) The Examiner states that it would have been obvious "to have used substances including excipients and dyes as taught by Silten in the modified device of Nielsen." (Office Action, page 6, paragraph 2.) However, as discussed above under section 1.b., the modified device of Nielsen does not disclose, teach, suggest, or render obvious the invention of claim 1. Using substances taught by Silten in such a modified device

does not compensate for the deficiencies of Nielsen and Fuisz et al. Claims 9 and 10 are dependent on claim 1. Therefore, the combination of the substances taught by Silten with the modified device of Nielsen does not disclose, teach, suggest, or render obvious the inventions of claims 9 and 10.

Consequently, claims 9 and 10 are not obvious over Nielsen in view of Fuisz et al. and further in view of Silten. Reconsideration of the rejection of claims 9 and 10 is respectfully requested.

d. Shayan in view of Frank et al. and further in view of Ninkov

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Shayan and Frank et al. and further in view of Ninkov.

Ninkov is directed to antimicrobial therapeutic compositions. The Examiner cites Ninkov as disclosing “useful therapeutic compositions for oral inhalation to treat infection that include liquids and emulsions of polyethylene glycol.” (Office Action, page 6, paragraph 3.) The Examiner states that it would have been obvious “to have used a polyethylene glycol emulsion in the modified device disclosed by Shayan and Frank.” (Office Action, page 6, paragraph 3.) However, as discussed above under section 1.a., the modified device of Shayan and Frank et al. does not disclose, teach, suggest, or render obvious the invention of claim 1. Using a polyethylene glycol emulsion in such a modified device does not compensate for the deficiencies of Shayan and Frank et al. Claim 8 is dependent on claim 1. Therefore, the combination of compositions taught by Ninkov with the modified device of Shayan and Frank et al. does not disclose, teach, suggest, or render obvious the invention of claim 8.

Consequently, claim 8 is not obvious over Shayan in view of Frank et al. and further in view of Ninkov. Reconsideration of the rejection of claim 8 is respectfully requested.

e. Shayan in view of Frank et al. and further in view of Silten

Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shayan and Frank et al. and further in view of Silten.

Silten is directed to an apparatus for generating vapors. The Examiner cites Nielsen as disclosing "a device for the inhalation of vapors comprising substances with excipients . . . and dyes." (Office Action, page 7, paragraph 1.) The Examiner states that it would have been obvious "to have used substances including excipients and dyes as taught by Silten in the modified device of Shayan and Frank." (Office Action, page 7, paragraph 1.) However, as discussed above under section 1.a., the modified device of Shayan and Frank et al. does not disclose, teach, suggest, or render obvious the invention of claim 1. Using substances taught by Silten in such a modified device does not compensate for the deficiencies of Shayan and Frank et al. Claims 9 and 10 are dependent on claim 1. Therefore, the combination of the substances taught by Silten with the modified device of Shayan and Frank does not disclose, teach, suggest, or render obvious the inventions of claims 9 and 10.

Consequently, claims 9 and 10 are not obvious over Shayan in view of Frank et al. and further in view of Silten. Reconsideration of the rejection of claims 9 and 10 is respectfully requested.

3. Request for Reconsideration and Allowance

Based upon the above Amendments and Remarks, claims 1-4, 7-10, and 13-23, as amended, are believed to be in proper form for allowance, and patentable over the prior art made of record. Applicant respectfully requests reconsideration of claims 1-4, 7-10, and 13-23, and a prompt Notice of Allowance thereon.

Please direct any questions or comments regarding this application to Audrey J. Babcock
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Respectfully submitted,
CNS, Inc., by its attorneys,

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